

Locke Lord LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, CA 90071

David Kupetz (State Bar No. 120562)  
david.kupetz@lockelord.com  
LOCKE LORD LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, CA 90071  
Telephone: (213) 485-1500  
Facsimile: (213) 485-1200

Shalom Jacob (Pro Hac Vice application forthcoming)  
sjacob@lockelord.com  
LOCKE LORD LLP  
Brookfield Place  
200 Vesey Street, 20th Floor  
New York, NY 10281  
Phone: (212) 415-8600 / Fax: (212) 303-2754

Donald E. Frechette (Pro Hac Vice application forthcoming)  
donald.frechette@lockelord.com  
LOCKE LORD LLP  
20 Church Street, 20th Floor  
Hartford, CT 06103  
Phone: (860) 525-5065 / Fax (860) 955-1145

Attorneys for Defendant  
MARICH BEIN LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OAKSTONE LAW GROUP, PC,

Marich Bein,

vs.

MARICH BEIN, LLC,

Defendant.

) Case No. 2:23-cv-1463

) **DEFENDANT'S OPPOSITION**  
) **TO PLAINTIFF'S EX PARTE**  
) **APPLICATION FOR**  
) **TEMPORARY RESTRAINING**  
) **ORDER AND REQUEST FOR**  
) **OSC RE: PRELIMINARY**  
) **INJUNCTION**

**Locke Lord LLP**  
300 S. Grand Avenue, Suite 2600  
Los Angeles, CA 90071

**TABLE OF CONTENTS**

INTRODUCTION .....	4
STATEMENT OF FACTS .....	7
APPLICABLE LEGAL STANDARD .....	17
LIKELIHOOD OF SUCCESS .....	18
IRREPARABLE HARM .....	20
BALANCE OF HARM .....	21
PUBLIC INTEREST .....	21
CONCLUSION.....	22

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011) .....	17, 18
Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) .....	17
Cedars-Sinai Med. Ctr. v. Shalala, 125 F.3d 765, 769 (9th Cir. 1997) .....	17
Colorado River Indian Tribes v. Town of Parker, 776 F.2d 846, 850 (9th Cir. 1985) .....	18
Earth Island Inst. v. Carlton, 626 F.3d 462, 469 (9th Cir. 2010) .....	17
Pacesetter Sys., Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th Cir. 1982) .....	16
Regents of Univ. of Cal. v. Am. Broad. Cos., 747 F.2d 511, 519 (9th Cir. 1984) .....	18
Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001) .....	17
Winter v. NRDC, Inc., 555 U.S. 7, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008) .....	17

**Statutes**

Fed. R. Civ. P. 65(c) .....	18
Fed. R. Civ. P. 65(b) .....	17

Defendant Marich Bein LLC (“**Marich Bein**”), in opposition to Plaintiff Oakstone Law Group, PC’s (“**Oakstone**”) *Ex Parte* Application for Temporary Restraining Order and Request for OSC re: Preliminary Injunction (the “*Ex Parte* Application”), states as follows:

### **INTRODUCTION**

1. Oakstone is a California corporation that filed its articles of incorporation not even two months ago, on January 9, 2023, but purports to be able to provide specialized consumer protection legal services to 15,000 clients that have supposedly retained it during that short period of time. According to Oakstone’s website ([www.oakstonepc.com](http://www.oakstonepc.com)), it employs a single attorney, Scott Eadie, a practitioner who bills himself as having, since 1983, a “practice [...] focused on representation of the injured worker in [*sic*] Workers’ Compensation system.”<sup>1</sup>

2. Marich Bein is not a law firm. It is a limited liability company that is in the business of servicing and acquiring accounts receivable.

3. Oakstone has filed the above-captioned action and requested issuance of a temporary restraining order as part of an ongoing scheme through which Oakstone and non-party The Litigation Practice Group PC (“**LPG**”), both law firms under the direction of a disbarred lawyer, Tony Diab (“**Diab**”), and apparently alter egos of each

---

<sup>1</sup> <https://www.oakstonepc.com/attorneys> (retrieved Feb. 28, 2023). Regarding Mr. Eadie, Oakstone’s website further states:

... He has represented both employers and injured workers before the Workers’ Compensation Appeals Board. Mr. Eadie has represented dozens of insurance companies, as well as hundreds of inmates before the Board of Prison Terms. His clients have ranged from notorious criminals to families affected by the economic downturn in our economy. He has deposed doctors hundreds of times in order to get the most benefits for his clients.

Nothing on Oakstone’s website asserts that Mr. Eadie has any experience in consumer protection.

1 other, are attempting to avoid LPG's contractual agreements with Marich Bein. In  
 2 particular, LPG: (a) assigned to Marich Bein the exclusive right to service all of  
 3 LPG's approximately 50,000 accounts receivable with its Clients, including without  
 4 limitation the right to withdraw monthly payments from the Clients' bank accounts;  
 5 and (b) assigned to Marich Bein, for value, the ownership of 15,000 to 20,000 of such  
 6 accounts receivable.

7 4. Oakstone has not produced any documents substantiating that it has any  
 8 rights with regard to any of LPG's clients or accounts. In an apparent attempt to  
 9 divert the Court's attention from this lack of proof, Oakstone states that Marich Bein  
 10 did not respond to Oakstone's requests that Marich Bein produce its documents. That  
 11 is patently false. As show by the email thread annexed as Exhibit 1 to the Declaration  
 12 of Alan H. Katz ("Katz Declaration") submitted in opposition to the *Ex Parte*  
 13 Application, Marich Bein offered to provide its documents if Oakstone would do the  
 14 same. Oakstone has not responded, other than that its counsel stated she was waiting  
 15 for direction from Oakstone.

16 5. Marich Bein's agreements with LPG predate Oakstone's existence and,  
 17 to the extent necessary, have been perfected. Marich Bein and LPG have been  
 18 operating pursuant to those agreements since well before Oakstone came into  
 19 existence.

20 6. In furtherance of their scheme, Oakstone and LPG now claim that, *inter*  
 21 *alia*: (a) LPG terminated contracts with its Clients; (b) LPG referred and transferred  
 22 (on information and belief, for no or inadequate consideration) at least 15,000 of those  
 23 Clients to Oakstone<sup>2</sup>; (c) Oakstone entered into "new" contracts with the 15,000  
 24 Clients; (d) LPG notified Marich Bein that Marich Bein's right to make withdrawals  
 25 from the Clients' bank accounts has been terminated; (e) LPG terminated Marich  
 26

---

27 <sup>2</sup> On information and belief, LPG is referring and transferring other Clients to other  
 28 law firms.

1 Bein's access to data necessary to allow Marich Bein to fully exercise the rights  
2 granted to it, and to which data Marich Bein is contractually entitled; and (f) LPG  
3 disavowed that it ever entered into any agreements with Marich Bein.

4 7. Marich Bein's agreements with LPG bar LPG from taking the actions  
5 ascribed to it in the preceding paragraph.

6 8. Notably, Oakstone does not allege that LPG assigned any legal services  
7 agreements or any accounts receivable to Oakstone. Nor does Oakstone allege that  
8 Marich Bein and Oakstone have any contractual relationship whatsoever. Yet,  
9 Oakstone claims that Marich Bein's continued operations under its agreements with  
10 LPG, agreements that Oakstone knew or should have known of at all relevant times,  
11 constitute tortious interference with Oakstone's relations with its clients. Indeed, it is  
12 Oakstone that is tortiously interfering with contracts – Marich Bein's contracts with  
13 LPG.

14 9. Marich Bein submits that a temporary restraining order should not issue  
15 here. Oakstone has not demonstrated and cannot demonstrate that it is likely to  
16 prevail in this action. Furthermore, to the extent that Oakstone may be an independent  
17 entity and not LPG's alter ego, which Marich Bein denies, any injury that it may be  
18 suffering is entirely of its own making and, in any event, is fully compensable by a  
19 money judgment. And although it is unfortunate that Oakstone has put its clients in  
20 an apparently untenable position, that, too, is of Oakstone's and LPG's doing.

21 10. On the other hand, it is abundantly clear that, if Marich Bein is not  
22 permitted to exercise the rights that it purchased, for substantial consideration, it will  
23 be irreparably damaged. Oakstone acknowledges that it will dissipate the revenue that  
24 it generates from the subject clients. It does not appear that Oakstone has, or will  
25 have, any other assets.

26 11. At the same time, Marich Bein acknowledges that the clients should not  
27 be adversely affected by this dispute between Marich Bein, on the one hand, and  
28

Oakstone and LPG, on the other hand. Therefore, Marich Bein suggests that until further proceedings can be had to determine who is entitled to debit the accounts identified by Oakstone, that Marich Bein (and not Oakstone or its agents) make withdrawals from such accounts and segregate the withdrawn funds in a separate bank account.

12. Marich Bein further submits that no final relief should be granted in this matter without the joinder, by Oakstone, of LPG.

### **STATEMENT OF FACTS**

13. LPG is a law firm that claims to specialize in resolution of consumer debt. Although it claims otherwise, LPG is, in reality, run entirely by Diab, a former attorney who has been disbarred in two states following disciplinary proceedings for serious ethics violations, including stealing client funds and forging the signature of a judge.

14. On information and belief, at times relevant to this matter, LPG had more than 50,000 active client accounts nationwide.

### **The Agreements Between Marich Bein and LPG**

15. On or about September 18, 2022, Marich Bein and LPG entered into an *Assignment of Servicing Rights* (“*Assignment*”)<sup>3</sup>, pursuant to which LPG agreed, *inter alia*, as follows:

#### **Article I. ASSIGNMENT**

Section I.1 Assignment of Servicing Rights. [LPG], by these presents does hereby presently, unconditionally, absolutely and irrevocably assign, transfer, convey and set over to [Marich Bein] (it being intended by [LPG] that such assignments constitute present, absolute and unconditional

---

<sup>3</sup> A copy of the Assignment is annexed as Exhibit 1 to the Declaration of Hershy Deutsch (the “Deutsch Declaration”) being submitted in opposition to Oakstone’s *Ex Parte* Application.

1 assignments and not assignments for additional security  
2 only, but such assignment shall constitute security for  
3 [LPG]’s obligations to [Marich Bein] or its affiliates), all of  
4 [LPG]’s right, title and interest in and to the Servicing  
5 Rights, including, without limitation, any right of [LPG] or  
6 any of its affiliates (whether such rights are currently  
7 existing or arising in the future) to service collection of  
8 subscription fees, return payment fees, or any other fee or  
9 payment resulting from any Customer’s engagement with  
10 [LPG] or any of its affiliates, or give notices, sue for  
11 payment under the Customer contracts or to take any action  
12 at law or in equity relating to the Customer contracts.

## 13 **Article II. SERVICING OF CONTRACTS**

14 **Section I.2 *[sic]* Appointment as Third-Party**  
15 **Servicer.** . . . [LPG] hereby retains [Marich Bein] to act as  
16 third-party [Marich Bein] for the Receivables . . . .

17 **Section I.3 *[sic]* Servicing of Receivables.** . . . [LPG]  
18 agrees to provide [Marich Bein] and its subcontractors with  
19 such assistance in the servicing, collection and  
20 administration of any Receivable as may be requested by  
21 [Marich Bein] from time to time.

22 **Section I.4 *[sic]* Limited Power of Attorney.** [LPG]  
23 hereby irrevocably appoints and empowers [Marich Bein] as  
24 [LPG]’s true and lawful attorney-in-fact, with full power of  
25 substitution, to endorse and promptly deposit on [LPG]’s  
26 behalf any checks or other instruments made payable to  
27  
28



1 [LPG] and submitted by a Customer as payment on any  
2 Receivable, and to take any other action relating to the  
3 Receivables in [LPG]'s name and place that [Marich Bein]  
4 deems advisable and consistent with the terms of this  
5 Agreement. This power of attorney shall be deemed to a  
6 right coupled with an interest.

7 \* \* \*

### 8 **ARTICLE III. OBLIGATIONS OF MERCHANT**

9 Section III.1 Access to All Digital Records,  
10 Databases, and Applications. [LPG] shall provide [Marich  
11 Bein] any information requested by [Marich Bein] with  
12 respect to its Customers and the Customer contracts. At all  
13 times, [Marich Bein] must have unfettered access to all  
14 software applications used by [LPG], including, but not  
15 limited to, Debt Pay Pro, Snowflake, or any other databases  
16 used by [LPG] in its ordinary course of business.

17 \* \* \*

18 Section III.3 No Impairment. [LPG] will not take  
19 any action (including placing or allowing placement of a lien  
20 or security interest on any Purchased Receivable) or make  
21 any omission that has, individually or in the aggregate, an  
22 adverse effect on any Purchased Receivable or on [Marich  
23 Bein]'s ability to collect on any Purchased Receivable.

24 Section III.4 Amounts Received. . . . [LPG] shall not  
25 in any way encourage or cause any proceeds to be paid,  
26 processed, settled or delivered to any person or account  
27 other than the [Marich Bein]'s account, and shall take all  
28

affirmative steps at its expense and as necessary or  
 appropriate to prevent any such occurrence from recurring.  
 [LPG] is prohibited from instructing any Customer to pay  
 [LPG] or any other third party on a Receivable or otherwise  
 suggest that Customer may make a payment to [LPG] or any  
 other third party instead of paying [Marich Bein] to satisfy  
 its payment obligation.

\* \* \*

## ARTICLE VI. MISCELLANEOUS

Section I.7 [*sic*] Term and Termination. This  
 Assignment shall commence on [September 19, 2022] and  
 shall continue in full force and effect, until released by  
 [Marich Bein]. [LPG] may terminate this Assignment at any  
 time and for any reason provided that the total amount of  
 Purchased Receivables held by [Marich Bein] and its  
 affiliates are less than \$1,000,000.00.<sup>[4]</sup>

\* \* \*

Section VI.1 [*sic*] Exclusivity. [LPG] understands and  
 agrees that the relationship set forth in this Assignment is  
 exclusive. [LPG] forgoes any right to contract with other  
 parties for the same or similar services provided by [Marich  
 Bein] under this Assignment.

(Underscoring and bolding in original.)

16. Since entering into the *Assignment*, Marich Bein has exercised the rights  
 granted to it therein and has complied with the terms thereof.

---

<sup>4</sup> The total amount of Purchased Receivables now held by Marich Bein is in excess of  
 \$1,000,000.00.

17. In addition to the *Assignment*, on or about August 18, September 21, October 6 and November 14, 2022, in return for the payment of amounts totaling in excess of \$10,000,000, LPG entered into *Accounts Receivable Purchase Agreements* (“**Agreements**”),<sup>5</sup> pursuant to which LPG sold, assigned, transferred and delivered to Marich Bein all of LPG’s right, title and interest in and to certain of LPG’s client accounts (“**Purchased Accounts**”), totaling between 15,000 and 20,000 accounts. Each of the *Agreements* was executed on behalf of LPG by Daniel S. March as Managing Shareholder and also by Diab.

18. In the *Agreements*, LPG warranted that:

- A. LPG was conveying to Marich Bein good, valid, transferable and marketable title to all of the Purchased Accounts, free and clear of all liens; and
- B. LPG’s delivery of the Purchased Accounts to Marich Bein would not conflict with, result in any violation of, or default under, or give rise to a right of termination or modification of any obligation, or loss of any benefit, under any contract to which LPG is a party, including any assigned contract.

19. In the *Agreements*, LPG further agreed:

- A. To indemnify and hold Marich Bein harmless against, *inter alia*, all claims, losses, liabilities, damages, deficiencies, diminutions in value, and costs sustained by Marich Bein as a result of, arising out of, or in connection with any inaccuracy in or breach of any representation or warranty or any breach or non-fulfillment of any

---

<sup>5</sup> Copies of the Assignments are annexed as Exhibits 2, 3, 4 and 5 to the Deutsch Declaration. Because the purchase prices in the Agreements are confidential and proprietary trade secret information, they have been redacted from the annexed copies of the Agreements. Further, because the Agreement’s spreadsheets listing the Purchase Accounts contain clients’ personal financial information, the spreadsheets are not included with the annexed copies.

obligation to be performed by LPG under its agreements with Marich Bein;

B. Neither the *Agreements* nor any rights or obligations of a party thereto shall be assigned, unless to an affiliate of the assigning party, without the prior written consent of the other party; and

C. Irreparable damage would occur if any provision of the *Agreements* was not performed in accordance with the terms thereof and that the parties would be entitled to specific performance thereof, in addition to any other remedy to which they are entitled under the *Agreements*, at law or in equity.

20. In an abundance of caution, Marich Bein has perfected any security interests under its agreements with LPG by filing appropriate UCC financing statements. However, such perfection is unnecessary since, under the *Agreements*, LPG sold the Purchased Accounts to Marich Bein.

21. Based on the foregoing agreements, and the promises, covenants, representations and warranties therein contained, and notwithstanding that the Purchased Accounts are Marich Bein's property, Marich Bein has the right to service all of LPG's accounts and make withdrawals from all of LPG's Clients.

### **LPG and Oakstone Act To Contravene Marich Bein's Rights**

22. For months after LPG's and Marich Bein's entry into the above described *Assignment* and *Agreements*, Marich Bein serviced the Clients' accounts, using data in LPG's software systems and processing withdrawals from the Clients' bank accounts, all in accordance with the parties' contractual arrangements and without objection from LPG.

23. However, in recent weeks LPG and Oakstone have taken actions in derogation of Marich Bein's rights as aforesaid.

24. On or about February 2, 2023, LPG implemented changes to its software systems so as to completely deny Marich Bein access thereto. Notwithstanding Marich Bein's repeated protests about this breach of LPG's obligation to provide "unfettered access," LPG has not restored access. The lack of such access is impairing Marich Bein's ability to accurately service the Clients' accounts.

25. On or about February 6, 2023, Marich Bein received an unsigned email purporting to be from legal@lpglaw.com directing Marich Bein to cease and desist from processing payments on any of the Clients' accounts. The email purports to disavow the *Assignment*, yet offers to discuss resolution of "this dispute."<sup>6</sup>

26. On information and belief, at about the same time, most of LPG's employees were discharged from its employ, and some, including at least two lawyers, became employees of Oakstone, which had been formed only one month earlier.

27. On February 10, 2023, Oakstone, through counsel, emailed Marich Bein a copy of a cease and desist letter that such counsel had sent to BankUnited ("***BankUnited Letter***").<sup>7</sup> The *BankUnited Letter* states that: (a) Oakstone has retained certain accounts from LPG and LPG has transferred its practice to Oakstone; and (b) Oakstone terminated BankUnited's "relationship" with those accounts on or about February 2, 2023, and has withdrawn any authorization to process automatic withdrawals from any customer account.

28. The *Assignment* prohibits LPG from taking the actions described in the *BankUnited Letter*.

29. The *BankUnited Letter* also enclosed a 300 page listing of clients, with bank account numbers and bank routing numbers. The list further includes thousands of accounts that are Purchased Accounts and, hence, Marich Bein's property.

---

<sup>6</sup> See Exhibit A-1 to the Declaration of Dongliang Jiang (the "Jiang Declaration") submitted by Oakstone in support of the *Ex Parte* Application.

<sup>7</sup> See Exhibit A-2 to the Declaration of Rusty O'Kane (the "O'Kane Declaration") submitted by Oakstone in support of the *Ex Parte* Application.

1           30. On February 16, 2023, Oakstone, through counsel, initiated an action (the  
2           **“BankUnited Action”**) against BankUnited in the District Court of Dallas County,  
3           Texas, 192nd Judicial District, under Cause No. DC-23-02116, seeking, among other  
4           things, a temporary restraining order and temporary and permanent injunctive relief  
5           enjoining BankUnited from processing debits on the accounts on the list enclosed with  
6           the *BankUnited Letter*.<sup>8</sup>

7           31. According to Oakstone’s *Petition*, on or about January 11, 2023, two  
8           days after Oakstone was formed, an alleged secured creditor named PECC  
9           Corporation (**“PECC”**) exercised remedies under an alleged promissory note and  
10          security interest. No detail was provided concerning the debt owed to PECC, whether  
11          and how any security interest was perfected, or the manner in which remedies were  
12          exercised. The *Petition* further asserted, as Oakstone asserts here, that LPG  
13          terminated its agreements with its clients, an action prohibited by the *Assignment*, and  
14          referred such clients to Oakstone, which is described, notwithstanding that it only  
15          recently came into existence, as a consumer protection law firm capable of servicing  
16          15,000 customers. Oakstone claims to have entered new legal service agreements  
17          with the 15,000 clients and to have the exclusive authority to process payments from  
18          those clients.

19          32. Although there is no express statement in the *Petition* that BankUnited is  
20          processing withdrawals for Marich Bein, Oakstone clearly believed that to be the case.  
21          However, notwithstanding that the equitable relief sought in the *Petition* would  
22          seriously impair, if not completely abrogate, Marich Bein’s rights under the aforesaid  
23          agreements, Oakstone failed to name Marich Bein in the *Petition*, thus depriving  
24          Marich Bein with advance notice of its filing or a contemporaneous opportunity to be  
25          heard in connection therewith.

26 \_\_\_\_\_  
27 <sup>8</sup> A copy of Oakstone’s petition (“Petition”) is annexed as Exhibit 2 to the Declaration  
28 of Alan H. Katz (the “Katz Declaration”) being submitted in opposition to Oakstone’s  
*Ex Parte* Application.

**LPG and Oakstone are Alter Egos or Oakstone is a Mere Continuation of LPG**

33. On information and belief, the LPG-Oakstone transaction was a sham transaction, put together for no consideration between affiliated or alter ego parties, for the sole purpose of attempting to divest Marich Bein of its exclusive rights to service LPG's accounts and Marich Bein's ownership of the Purchased Accounts, accounts for which Marich Bein paid in excess of \$10,000,000.

34. Prior to January 9, 2023, Oakstone did not exist.

35. On information and belief, at the time that the LPG-Oakstone transaction took place, allegedly on January 11, 2023, Oakstone had no ability to provide any types of legal services to 15,000 clients, much less specialized consumer protection legal services.

36. On information and belief, much of LPG's staff, including at least two lawyers, have been transferred to Oakstone.

37. On information and belief, Diab manages Oakstone's financial affairs, just as he has been doing for LPG.

38. Although the California Secretary of State's records indicate that Daniel S. March is the only officer of LPG, and the *Assignment* and *Agreements* were signed by March as "Managing Shareholder," Marich Bein's dealings with LPG have been with Diab (excepting operations-related communications that have been with lower level employees).

39. From Marich Bein's recent communications with Diab, Marich Bein believes that Diab directs Oakstone's operations. Marich Bein's counsel asked Oakstone's counsel for the name of an Oakstone representative, and counsel professed not to recall the name of any such individual. Further, until Oakstone filed its initial statement of information with the California Secretary of State on February 23, 2023, it was not clear whether there was any other available representative with whom an interested party could communicate. That statement lists Scott J. Eadie, who as



1 described below is clearly not the person directing Oakstone, as CEO and Director,  
2 and Dongliang Jiang, a non-attorney, as CFO.

3 40. Additionally, until approximately one to two weeks ago, Oakstone  
4 appeared to have only a single attorney, Jayde Trinh, a recent law school graduate and  
5 LPG attorney whose name remained on LPG's website.

6 41. As of February 19, 2023, Oakstone's website identified a single attorney,  
7 Scott J. Eadie, as its "head attorney." LPG's website also has a page describing Mr.  
8 Eadie. Mr. Eadie has clearly become affiliated with LPG and Oakstone only very  
9 recently. On information and belief, for approximately 40 years Mr. Eadie has  
10 practiced worker's compensation law at his own law firm, which is still in operation.  
11 Mr. Eadie does not appear to have the experience needed to provide consumer  
12 protection legal representation to 15,000 consumers located across the United States,  
13 much less the background to handle such a firm's financial affairs.

14 42. On February 24, 2023, Marich Bein filed a complaint against LPG and  
15 Oakstone in the United States District Court for the Central District of California.<sup>9</sup>  
16 This action is pending before United States District Judge David O. Carter. That  
17 action was commenced prior to the instant action pending before this Court and  
18 involves the same parties and issues.

19 The first-to-file rule states that "when two identical actions are filed in courts of  
20 concurrent jurisdiction, the court which first acquired jurisdiction should try the  
21 lawsuit and no purpose would be served by proceeding with a second action."  
22 *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982); The first-to-  
23 file rule is "a generally recognized doctrine of federal comity which permits a district  
24 court to decline jurisdiction over an action when a complaint involving the same  
25 parties and issues has already been filed ...." *Id.*, 94-95 (9th Cir. 1982) (citations  
26 omitted). A district court applying the rule may transfer, stay, or dismiss the second-  
27

28 <sup>9</sup> A copy of the complaint is annexed as Exhibit 3 to the Katz Declaration.



1 filed case. See *Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 769 (9th Cir. 1997).  
2 Under the first-to-file rule, the instant case should be dismissed as the second-filed  
3 case.

#### 4 **APPLICABLE LEGAL STANDARD**

5 A temporary restraining order is an "extraordinary remedy that may only be  
6 awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v.*  
7 *NRDC, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008); see *Earth*  
8 *Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (discussing that plaintiffs  
9 "face a difficult task in proving that they are entitled to this 'extraordinary remedy'").  
10 The standard for issuing a temporary restraining order is "substantially identical" to  
11 that for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush &*  
12 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Pursuant to Federal Rule of Civil  
13 Procedure ("Rule") 65, a court may grant preliminary injunctive relief to prevent  
14 "immediate and irreparable injury." Fed. R. Civ. P. 65(b). To obtain this relief, a  
15 plaintiff must establish the "Winter" factors: (1) "he is likely to succeed on the  
16 merits"; (2) "he is likely to suffer irreparable harm in the absence of preliminary  
17 relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the  
18 public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046,  
19 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).

20 In the Ninth Circuit, the Winter factors may be evaluated on a sliding scale:  
21 "serious questions going to the merits, and a balance of hardships that tips sharply  
22 towards the plaintiff can support issuance of a preliminary injunction, so long as the  
23 plaintiff also shows that there is a likelihood of irreparable injury and that the  
24 injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d  
25 1127, 1135 (9th Cir. 2011) (internal quotation marks omitted). "The court may issue a  
26 preliminary injunction or a temporary restraining order only if the movant gives  
27 security in an amount that the court considers proper to pay the costs and damages  
28

1 sustained by any party found to have been wrongfully enjoined or restrained." Fed. R.  
2 Civ. P. 65(c).

3 Plaintiff has the burden of demonstrating through clear and convincing  
4 evidence the likelihood of immediate irreparable harm absent the TRO. "[A] party is  
5 not entitled to a preliminary injunction unless he or she can demonstrate more than  
6 simply damages of a pecuniary nature." Regents of Univ. of Cal. v. Am. Broad. Cos.,  
7 747 F.2d 511, 519 (9th Cir. 1984). "The possibility that adequate compensatory or  
8 other corrective relief will be available at a later date . . . weighs heavily against a  
9 claim of irreparable harm." Colorado River Indian Tribes v. Town of Parker, 776 F.2d  
10 846, 850 (9th Cir. 1985) (citation omitted). Even under the sliding scale approach, a  
11 plaintiff must still show a likelihood of irreparable injury. See All. for the Wild  
12 Rockies, 632 F.3d at 1135 ("[S]erious questions going to the merits' and a balance of  
13 hardships that tips sharply towards the plaintiff can support issuance of a preliminary  
14 injunction, so long as the plaintiff also shows that there is a likelihood of irreparable  
15 injury and that the injunction is in the public interest.")

#### 16 **LIKELIHOOD OF SUCCESS**

17 43. To obtain a temporary restraining order, Oakstone must show, as it  
18 acknowledges, that it is likely to prevail on the merits.

19 44. Oakstone has not shown that it is likely to prevail on the merits. It claims  
20 that it has documentary evidence to prove that Marich Bein no longer possesses the  
21 right to process payments for customers who have supposedly been referred by LPG  
22 to Oakstone, but it has produced nothing other than an email purporting to notify  
23 Marich Bein that its rights have been terminated and claiming that such rights never  
24 existed in the first place.

45. Putting aside that the email has not been properly authenticated<sup>10</sup> and its sender is not known, that LPG may have sent it does not mean that Oakstone is likely to prevail.

46. The email flies in the face of *Assignment* and the *Agreements* and is of no effect whatsoever.

47. The *Assignment*, which provides servicing rights to Marich Bein, states it cannot be terminated until a certain condition has been satisfied. The condition has not been satisfied; Oakstone does not contend otherwise.

48. The *Agreements* grant outright ownership of the Purchased Accounts to Marich Bein. Approximately 4,000 of the accounts on Oakstone's list are Marich Bein's property. Does Oakstone contend that Marich Bein may not service accounts receivable that it purchased?

49. Further, although Oakstone asserts that in its less than two months of existence it has entered into legal representation agreements with 15,000 clients, yet it has not submitted even a single agreement for the Court's review. Nor has it submitted any documentation showing that any of LPG's clients cancelled their agreements with LPG.<sup>11</sup>

50. Indeed, Oakstone has not produced any documents substantiating that it has any rights with regard to any of LPG's clients or accounts. In an apparent attempt to divert the Court's attention from this lack of proof, Oakstone states that Marich Bein did not respond to Oakstone's requests that Marich Bein produce its documents. That is patently false. As show by the email thread annexed to the Katz Declaration

---

<sup>10</sup> The email is "authenticated" only by a declaration of Oakstone's CFO. The email is not a business record created by Oakstone, and Oakstone is not on its distribution list. Further, it does not identify its sender.

<sup>11</sup> Further, it is not clear that LPG is even able to terminate agreements with its clients, certainly not without the clients' consent. The form of agreement that LPG provided to Marich Bein provides that LPG may terminate only in limited circumstances, not simply "at-will."

1 as Exhibit 1, Marich Bein offered to provide documents if Oakstone would do the  
2 same. Oakstone did not respond, other than by its counsel stated that she was waiting  
3 for direction from her client.

4 51. In sum, Oakstone has not made, and cannot make, a showing that it is  
5 likely to prevail in this action.

6 **IRREPARABLE HARM**

7 52. Oakstone cannot show that it will suffer irreparable harm if a temporary  
8 restraining order is not entered. Indeed, Oakstone has known of this conflict with  
9 Marich Bein since at least February 6, 2023, when the email purporting to terminate  
10 Marich Bein's rights was sent, and possibly since its supposed taking over of LPG's  
11 business on January 11, 2023. Yet it is still in business. Oakstone has not  
12 demonstrated that it will suffer irreparable harm during the relatively few additional  
13 days that would elapse before the Court could consider granting a preliminary  
14 injunction.

15 53. Oakstone claims that it will lose customers, faces "incalculable" damages  
16 to its (2 month old) reputation and goodwill, and may have to close its doors if Marich  
17 Bein does not cease withdrawing funds from clients' accounts.

18 54. Oakstone has an adequate remedy at law. If Marich Bein is tortiously  
19 interfering with Oakstone's contractual or economic relations and causing damage to  
20 Oakstone – which it is not doing, such damage can be remedied by a money judgment.

21 55. Marich Bein submits that this should not be viewed as a situation where a  
22 long established business might be driven into the ground. Oakstone was formed on  
23 January 9, 2023. Oakstone asserts that it began as a result of a January 11, 2023,  
24 exercise by LPG's secured creditor, PECC Corporation, of remedies, with Oakstone  
25 being formed in an attempt to salvage LPG's allegedly failing business, using LPG's  
26 clients, back office employees and a new figurehead (Mr. Eadie in place of LPG's  
27 Daniel March). Marich Bein submits that Oakstone is nothing more than LPG's alter  
28

1 ego, or perhaps its successor. But if not, then Oakstone and its principals either knew  
2 that they were stepping into a troubled situation or were misled by Tony Diab.

3 **BALANCE OF HARM**

4 56. Oakstone asserts that it faces severe hardship if the injunction does not  
5 issue but Marich Bein “will simply be required to temporarily cease its unauthorized  
6 billing practices.”

7 57. Marich Bein’s billing practices are fully authorized by the *Assignment*  
8 and *Agreements*, notwithstanding Oakstone’s protestations to the contrary. And while  
9 a temporary restraining order would, by its nature, cause only a temporary cessation of  
10 Marich Bein’s servicing of the accounts receivable, it is more than likely that Marich  
11 Bein will not be able to recover whatever amounts Oakstone improperly withdraws  
12 from the clients’ accounts during the pendency of the proposed temporary relief.  
13 Oakstone had nothing before January 9, 2023, it clearly has little if anything now, and  
14 its fortunes are unlikely to improve in the future. Should the requested temporary  
15 restraining order issue, Marich Bein will suffer irreparable harm.

16 **PUBLIC INTEREST**

17 58. Oakstone asserts that public interest is a consideration in this case, and it  
18 is only here that it appears that the parties are in agreement. However, Marich Bein  
19 should not have to bear the irreparable harm that will be caused to it by allowing  
20 Oakstone to withdraw funds from the clients’ accounts, including especially those  
21 accounts underpinning the accounts receivable that LPG sold to Marich Bein, and  
22 exhausting such funds in operating Oakstone’s business.

23 59. Marich Bein suggests that, during the pendency of the temporary  
24 restraining order, it be allowed to withdraw funds from the clients’ accounts and  
25 segregate such funds pending further order of the Court, and that Oakstone be ordered  
26 to continue providing services to the clients during that short period, as it supposedly  
27 has been doing since January 11, 2023, and, further, to provide Marich Bein access to  
28

1 all software systems that Oakstone or its representatives would otherwise be using in  
2 the course of servicing such accounts.

3 **CONCLUSION**

4 For all the foregoing reasons, Marich Bein respectfully requests that Oakstone's  
5 Application for Temporary Restraining Order and Request for OSC Re: Preliminary  
6 Injunction be denied, and that Marich Bein be granted such other and further relief as  
7 the Court deems just and proper. In the alternative that the Court nonetheless  
8 determines to issue a temporary restraining order, a substantial bond should be  
9 required.

10 Dated: February 28, 2023

Respectfully submitted,

11 LOCKE LORD LLP

12  
13 By: /s/ David Kupetz

14 David Kupetz

15 *Attorneys for Defendant MARICH BEIN LLC*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28